

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Extension of Time to
Construct Digital Facilities
WSTR-DT, Cincinnati, Ohio
File No. BEPCDT-20020301AKD
ID No. 11204

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2002

Released: September 16, 2002

By the Chief, Media Bureau:

1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by WSTR Licensee, LLC (WSTR) seeking reconsideration of the Bureau's letter of June 14, 2002, denying its request for an extension of time to construct the digital facilities for WSTR-DT and admonishing WSTR for failing to meet the May 1, 2002, construction deadline for DTV facilities. For the reasons stated below, we deny the petition.

2. In its petition, WSTR argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored WSTR's good faith efforts to meet the May 1, 2002, construction deadline; (3) failed to provide due process by not providing adequate notice of its intent to impose admonishments; and (4) failed to afford similarly situated parties similar treatment.

3. WSTR relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. WSTR claims that the Bureau misstated relevant facts when it concluded that WSTR had four years to make adequate arrangements to build its DTV facility. WSTR also claims that the Bureau erred in concluding that WSTR's representations that its facility would be operational by November 2002 had no reasonable basis. WSTR states that it was unreasonable for the Bureau to have expected completion of the station by the May 2002 deadline because the construction permit was not issued until May 2001 and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. WSTR also provides a timeline setting out past and future construction steps in support of its position that it made extensive good faith efforts to meet the May 1, 2002, deadline. WSTR contends that its actions supported a reasonable expectation that its DTV facility would be operational by November 2002.

4. We find these arguments unpersuasive. To begin with, any delay in the approval of WSTR's DTV application arose from the proposals laid out in the application itself. DTV applications that were incomplete, that presented technical, legal, or financial questions, or that were mutually exclusive with other applications naturally took longer to resolve than applications that were grantable as filed.

Furthermore, WSTR reasonably should have anticipated that there would be heavy demand on engineers due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. Therefore, WSTR's delays either arose from its own actions or from a situation which it easily could have foreseen. In addition, WSTR's statements regarding its ability to commence DTV operation by November 2002 were predicated upon, among other things, delivery of an antenna system, which it says is not expected until September 2002. In its timeline, WSTR states that its engineer will file a modification application to reflect the manufacturer's change in its antenna specifications. The Commission's records indicate that the modification application has not yet been filed. In addition, WSTR's new timeline abandons the November 2002 date and states that the licensee now hopes to commence DTV operation in December, 2002. The Bureau's conclusion that WSTR had failed to justify its failure to meet the May 1, 2002, date and that WSTR's projection that its station would be operational by November 2002 had no reasonable basis were, therefore, well founded.

5. WSTR next argues that the Bureau failed to give sufficient notice that it would admonish parties who failed to meet the DTV construction deadline. Admonishment is not an unusual or excessively punitive remedy, but rather is a penalty regularly imposed in a variety of contexts for failure to abide by Commission requirements.¹ In this context, WSTR failed to comply with a Commission imposed build-out requirement. Its apparent expectation that it would be permitted to do so without ramifications was baseless and mistaken. As a result, WSTR's contention that it was denied "due process" when it received an admonishment for failure to comply with the build-out requirement is without merit. WSTR should note, however, that if it continues to miss deadlines imposed by the Commission on its DTV build out, it will be subject to additional sanctions.

6. Finally, WSTR argues that similarly situated parties were not given similar treatment. Apparently, WSTR contends that it was treated unfairly because its DTV application was approved later than the applications of other parties. As noted above, any delay in processing WSTR's application resulted from the terms of WSTR's proposal, not from any disparate treatment of WSTR. We, therefore, reject WSTR's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by WSTR Licensee, LLC seeking reconsideration of the Bureau's letter of June 14, 2002, which denied WSTR's request for an extension of time to construct the digital facilities for WSTR-DT and admonished WSTR for failure to meet the May 1, 2002, construction deadline for digital television facilities, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

¹ See, e.g., *Davidson County Broadcasting*, 12 FCC Rcd 3375 (1997)(failure to comply with EEO rules); *Rainbow Broadcasting*, 14 FCC Rcd 11099 (1999)(failure to obtain Commission consent prior to replacing authorized antenna); *Black Media Broadcasting*, 16 FCC Rcd 3374 (2001)(broadcast of commercials on noncommercial station).